

STATE OF VERMONT  
PUBLIC SERVICE BOARD

CPG #NM-499

Application of the Foundation for a Sustainable )  
Future requesting a Certificate of Public Good )  
for an interconnected net metered wind turbine )

Order entered: 9/17/2008

**ORDER RE APPLICATION FOR METEOROLOGICAL TOWERS**

**I. INTRODUCTION**

This docket concerns an application filed by the Foundation for a Sustainable Future ("Applicant") on July 30, 2008, requesting that the Vermont Public Service Board ("Board") issue a Certificate of Public Good ("CPG") for two temporary meteorological test towers to be located in Huntington, Vermont.<sup>1</sup> One of the towers is an existing wind turbine tower and the other tower would be a new tower placed at an alternate site.<sup>2</sup> The towers will collect wind data to be used in determining the eventual site of a proposed net metered wind turbine.<sup>3</sup> In this Order we approve the application.

**II. PROCEDURAL HISTORY**

In order to discuss the instant application, it is helpful to briefly review the history of the Applicant's prior net metering applications and subsequent investigations in Docket No. CPG #NM-297.

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1. The application was initially filed on June 25, 2008, but was not completed until July 30, 2008.

2. The existing tower site has been the subject of investigation by the Board in Docket No. CPG #NM-297. In that proceeding, the Hearing Officer recommended approval of the wind turbine construction, provided it was relocated to another site on the Applicant's property.

3. See application at attachment and supplemental information filed on July 30, 2008.

On October 30, 2006, the Applicant filed an application for a 6 kW wind turbine to be located on an existing tower on its property in Huntington. On June 20, 2007, the Hearing Officer issued a Proposal for Decision ("PFD") in that docket, recommending that the proposed project be relocated to an alternative site identified by the Applicant.

On June 29, 2007, in its comments on the PFD, the Applicant included a motion for the evidentiary record in this case to be reopened to develop additional evidence regarding the alternative site recommended. On July 31, 2007, the Hearing Officer issued an Order approving the Applicant's motion to reopen the evidence in this case.

On November 13, 2007, the Hearing Officer issued a revised Proposal for Decision recommending that the Board approve the CPG on the condition that the turbine is moved to a location, identified in the revised Proposal for Decision, with less adverse aesthetic impact. On November 28, 2007, the Applicant filed comments opposing the Hearing Officer's recommendation and requesting oral argument before the Board.

On December 21, 2007, the Applicant filed a Motion to Amend its Application for a CPG. The proposed amendment included a larger turbine and tower to be erected at the existing tower site. Because the Applicant filed the Motion to Amend, the Board did not schedule the site visit and oral argument on the originally proposed project.

On February 8, 2008, the Board issued an Order denying the Applicant's Motion to Amend because the amendment represented a substantial change to the project. The Order required the Applicant to file an application (using the Board's current application form) for the amended project and provide notice to all adjoining landowners and all other parties required to be notified pursuant to Board Rule 5.100 in order to proceed with the amendment. The Order also required that, should the Applicant wish to proceed with the originally proposed project, the Applicant must notify the Board within two weeks of the date of the Order.

As noted, the instant proceeding begins with the Applicant's new request for a CPG for two temporary meteorological towers. On July 24, 2008, E. Miles Prentice, a neighboring landowner, filed comments regarding the application. Mr. Prentice also filed a motion to dismiss the application and a motion to order removal of the existing turbine tower. Mr. Prentice also makes certain requests in the event the application is not dismissed.

On July 25, 2008, Dhyan Nirmegh, a neighboring landowner, filed comments on the application. Mr. Nirmegh opposes allowing the existing tower to be used as a meteorological testing tower.

On August 11, 2008, the Applicant filed a response to Mr. Prentice's motion to dismiss and motion to order removal of the existing tower.

### **III. FINDINGS**

Based upon the application and its accompanying documents, the Board makes the following findings in this matter.

1. The proposed project will be on property owned by the Applicant and located at 410 Camel's Hump Road in Huntington, Vermont. Application at Section 1.
2. The proposed project consists of two temporary meteorological towers. One of the towers is an existing metal lattice tower 120 feet in height with a width of 17 feet on each side at its base. The other tower will be a new tower located at an alternate site and will consist of a monopole tilt-up tower 6 inches in diameter and 100 feet in height. Supplemental Application Information, filed July 31, 2008; *see* Revised Proposal for Decision in Docket No. CPG #NM-297.
3. The purpose of the project is to simultaneously monitor and compare the wind resource at two sites on the Applicant's property for a three-month period. Supplemental Application Information, filed July 31, 2008.

### **IV. DISCUSSION AND CONCLUSIONS**

#### **Motions to Dismiss and Remove Tower**

Mr. Prentice objects to the existing tower being used as a meteorological test tower. Mr. Prentice argues that the authority granted the Board pursuant to 30 V.S.A. § 219a does not give the Board jurisdiction to grant a CPG for meteorological towers. Mr. Prentice also argues that the Hearing Officer has twice determined that placing a turbine at the existing tower site would have an undue adverse impact on the surrounding area. In addition, Mr. Prentice argues that there is no need for additional wind data at this site because the Applicant has been recording

wind data for over a year. Mr. Prentice also contends that, because the existing tower has not been approved under local zoning or state law, it is an illegal facility. Further, Mr. Prentice argues, because the existing tower is an illegal facility the Board should order the Applicant to remove the tower before allowing any further proceedings or applications before the Board.

The Applicant argues that the Board has the authority to review the application because the proposed meteorological towers are "reasonably related" to the construction of a net metered generation facility over which the Board has explicit jurisdiction. The Applicant contends that, while it has in the past collected and continues to collect wind data at the existing tower site, it is necessary to concurrently collect data from both sites "to resolve the core factual dispute about wind power production potential in this case and move this project forward." The Applicant also argues that the tower is not illegal under local zoning bylaws because it has filed an appeal to the Environmental Court and that appeal is still pending.

Section § 248(a)(2) of Title 30 prohibits any person or company from site preparation or construction of an electric generation facility unless the Board determines that the project will promote the general good of the state and issues a certificate to that effect. Board Rule 5.100, which governs net metered generation systems, incorporates by reference 30 V.S.A. § 248. The Rule expressly provides that the Rule applies to "all net metered installations in Vermont, and applies to every person, . . . engaged in the construction or operation of any net metering system which is or shall become subject to the jurisdiction of this Board."<sup>4</sup> As Mr. Prentice has pointed out, meteorological towers are not by themselves generation facilities. However, the Board has consistently held that because these towers are directly related to the future construction of generation facilities they fall within the Board's jurisdiction under § 248.<sup>5</sup> Furthermore, the

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4. Public Service Board Rule 5.101.

5. Docket No. 7037, *Petition of EMDC, LLC for a Certificate of Public Good authorizing the construction and operation of a temporary wind measurement tower and associated meteorological equipment at each of the following three sites: (1) East Haven Mountain located in the Town of East Haven, Vermont; (2) an unnamed hilltop located near Seneca Mountain in the Town of Ferdinand, Vermont; (3) an unnamed hilltop located south of the Town of Brighton, Vermont*, July 29, 2005, at 6-10.

legislature has specifically recognized that meteorological tower construction falls under § 248. In Act No. 92 of the 2008 session, the legislature directed the Board to establish a streamlined review process for these towers. Thus, we conclude that the Board has the authority to review an application for meteorological towers as site preparation reasonably related to a net metered generation facility.

The Applicant seeks approval for two temporary meteorological towers to collect wind data over a three-month period. One of the meteorological towers is actually a wind turbine tower that has been in place since 2006 without Board approval.<sup>6</sup> The other tower will be a newly erected tower at another location on the Applicant's property to allow for concurrent wind measurement at the two sites. No party has raised any concerns related to the construction of a new tower at this alternative site. Therefore, we conclude that the new tower does not raise any significant issues with respect to the environmental criteria of 30 V.S.A. § 248 and a CPG should be issued for this tower.

With respect to the existing tower, Mr. Prentice argues that the tower has not received necessary approval and should, therefore, be removed. Mr. Prentice is correct that the construction of the tower was not approved by the Board. We also note that the Hearing Officer in CPG #NM-297 has twice found that construction of a wind turbine generation facility at the existing site would have an undue adverse impact on the surrounding environment and recommended relocating the project to an alternative site. Furthermore, the existing lattice tower is much larger and more visible than those typically approved by the Board for wind data collection, and the aesthetic impact of the tower has not been reviewed by the Board. However, we conclude that the Applicant's proposal to leave the existing tower in place on a temporary basis for an additional three months to collect additional wind data will have little incremental impact on the surrounding landowners. Therefore, we grant the Applicant's request to allow the existing tower to remain in place and collect wind data for an additional three months. Our approval is conditioned upon the Applicant's agreement to remove both of the towers and associated wind measurement equipment at the end of the three-month period. Because we have

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6. An appeal by the Applicant of the local Zoning Board of Adjustment's decision to deny a permit to the wind turbine is pending in Environmental Court.

required that both towers be removed in three months, there is no need to reach Mr. Prentice's motion to order removal of the existing tower.

### Requests

Mr. Prentice makes a number of requests related to further investigation and hearings in this matter. The requests include the appointment of Gregg Faber as Hearing Officer, request for party status, inclusion of the evidentiary record from CPG #NM-297 and, a request for hearing.

The Applicant argues that there is no need for further investigation of this matter and, therefore, Mr. Prentice's request for hearings in this matter and to include the evidentiary record from CPG #NM-297 should be denied. The Applicant does not oppose appointing Gregg Faber as Hearing Officer.

As discussed above, the Board has determined that further investigation or hearings in this matter are unnecessary. Therefore, we will defer ruling on Mr. Prentice's requests. Should further investigation or hearings become necessary, the Board will at that time rule on Mr. Prentice's requests.

### **V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The proposed project, in accordance with the evidence and plans presented in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248 subject to the conditions set forth below, and a certificate of public good shall be issued in the matter.
2. The proposed project shall be constructed in accordance with the evidence and plans submitted in this proceeding. Any material deviation from these plans or specifications must be approved by the Board.
3. The motion to dismiss the application is denied.
4. Both wind measurement towers and all associated wind measurement equipment shall be removed from the respective sites within three months of the date of the Certificate of Public Good issued in this docket.

Dated at Montpelier, Vermont, this 17th day of September, 2008.

<u>s/James Volz</u>	)	
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<u>s/Daivd C. Coen</u>	)	
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PUBLIC SERVICE  
BOARD  
OF VERMONT

OFFICE OF THE CLERK

FILED: September 17, 2008

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*